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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/801,015   | 03/15/2004  | Mark A. Stansbury    | 27028-6             | 1017             |
| 52450  | 7590        | 10/07/2005           | EXAMINER            |                  |
| KRIEG DEVAULT LLP<br>ONE INDIANA SQUARE<br>SUITE 2800<br>INDIANAPOLIS, IN 46204-2079 |             |                      | MARSH, STEVEN M     |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3632                |                  |

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |                    |
|------------------------------|-----------------|--------------------|
| <b>Office Action Summary</b> | Application No. | Applicant(s)       |
|                              | 10/801,015      | STANSBURY, MARK A. |
| Examiner                     | Art Unit        |                    |
| Steven M. Marsh              | 3632            |                    |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 July 2005.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,4-6,8 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,4-6,8 and 20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 26-32 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

This is the second office action for U.S. Application 10/801,015 for a Furnace Mount and Method of Installation filed on March 5, 2004. Claims 1, 4-6, 8, 20, and 26-32 are pending.

### *Election/Restrictions*

Newly submitted claims 26-32 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 26-32 claim a combination of a furnace and furnace mount, whereas the claims previously only claimed the subcombination of a furnace mount.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 26-32 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 4-6, 8, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benton et al. in view of Rozek, and in further view of Brabson. Benton discloses an integral main body member (14) that has a first surface (the bottom) adapted to abut a floor and allow slidable movement thereon (before the fastener is inserted, the surface allows slidable movement), and a second surface (top of the lower flange of the L-shaped bracket) space from the first surface (by its thickness) and adapted to support a furnace above a floor. There is a locating portion with an upstanding member (16) that extends perpendicular to the second surface, and an adherent component (34) parallel and connected to the second surface and located on the upstanding member. The adherent component includes a vibration dampening pad defined by an elastomeric, cork material (col. 2, line 7), and the mount includes a means for engaging and coupling the main body member to an object (12).

Benton does not disclose the coupling means being an adhesive surface included with the adherent component. Rozek teaches a mount with a main body member (24) and an adherent component (23, 26), wherein the component includes a vibration dampening material (23) with an adhesive layer/outer surface (26). It would have been obvious to one of ordinary skill in the art at the time of the present invention to have modified the mount of Benton by substituting an adhesive layer attached to the upper surface of the adherent component (34) for the coupling means (42) because adhesives, nails, screws, etc. are equivalents in the fastening art and the selection of one of the these known equivalents to secure the mount to an object would be within the level of ordinary skill in the art.

Benton in view of Rozek does not disclose the locating portion as including two upstanding members. Brabson discloses a mount with a main body member having a locating portion with two upstanding members (21) that are perpendicular to the main body member and each other. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have modified the main body member of Benton in view of Rozek to include a second upstanding member perpendicular to the first upstanding member, for the purpose of providing a means for firmly holding the supported object against movement, as taught by Brabson.

### ***Response to Arguments***

Applicant's arguments filed July 22, 2005 have been fully considered but they are not persuasive. In response to Applicant's arguments that the structure of Benton et al. is not intended to be slidable across the floor, it is noted that Applicant only claims that the surface be "adapted to abut the floor and allow slidable movement thereon". The surface of the bracket taught by Benton et al. is adapted to do that before the fastener is inserted into the bracket. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Benton et al. does not disclose a mount designed to be coupled to a furnace without mechanical fasteners, but Rozek is relied upon to remedy the deficiency as discussed above in the rejection under section 103.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Marsh whose telephone number is (571) 272-6819. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30 PM. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone

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number is (571) 272-3600. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

*SM*

Steven M. Marsh

October 3, 2005

*Anita King*  
ANITA KING  
PRIMARY EXAMINER